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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**NEIL BRADSHAW dba STONE PLUS,  
INC.,**

**Plaintiff,**

**v.**

**THOMAS PEREZ, Secretary of Labor,  
Mine Safety and Health Administration,**

**Defendant.**

**REPORT AND RECOMMENDATION**

**Case No. 2:16-cv-00646-DN-PMW**

**Chief District Judge David Nuffer**

**Chief Magistrate Judge Paul M. Warner**

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Chief District Judge David Nuffer referred this case to Chief Magistrate Judge Paul M. Warner pursuant to 28 U.S.C. § 636(b)(1)(B).<sup>1</sup>

Plaintiff's complaint in this case was filed on June 17, 2016.<sup>2</sup> Pursuant to rule 4(m) of the Federal Rules of Civil Procedure, service of a summons and complaint must be completed within ninety (90) days after the filing of the complaint. *See* Fed. R. Civ. P. 4(m). More than ninety (90) days have passed since the filing of Plaintiff's complaint, and Plaintiff has not provided the court with the requisite proof of service to demonstrate that the summons and complaint have been served on the defendant named in the complaint. *See* Fed. R. Civ. P. 4(l).

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<sup>1</sup> *See* docket no. 2.

<sup>2</sup> *See* docket no. 1.

For that reason, on August 15, 2017, this court entered an order for Plaintiff to show cause why this case should not be dismissed.<sup>3</sup> Plaintiff was directed to respond to the court in writing no later than August 31, 2017, to inform the court of the status of this case and his intentions to proceed. Plaintiff was warned that his failure to do so would result in a recommendation to Chief Judge Nuffer that this case be dismissed. As of the date of this report and recommendation, Plaintiff has not filed any response to the order to show cause.

In relevant part, rule 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). As stated in the order to show cause, more than ninety (90) days have passed since Plaintiff’s complaint was filed, and Plaintiff has not provided the court with the requisite proof of service to demonstrate that the summons and complaint have been served on the defendant named in the complaint. The court’s order to show cause has provided Plaintiff with notice of this deficiency as required by rule 4(m), *see id.*, and Plaintiff has failed to respond to that order. Accordingly, pursuant to rule 4(m), IT IS HEREBY RECOMMENDED that this case be DISMISSED WITHOUT PREJUDICE. *See id.*

Copies of this Report and Recommendation are being sent to all parties, who are hereby notified of their right to object. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The parties must file any objection to this Report and Recommendation within fourteen (14) days after being

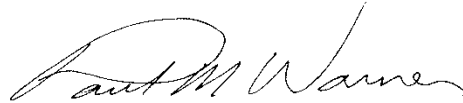
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<sup>3</sup> *See* docket no. 3.

served with a copy of it. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Failure to object may constitute waiver of objections upon subsequent review.

DATED this 15th day of September, 2017.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER  
Chief United States Magistrate Judge